



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 1, 1990

Honorable Robert M. Saunders
Chairman
House Environmental Affairs
P. O. Box 2910
Austin, Texas 78768-2910

LO-90-31

Dear Mr. Saunders:

You ask whether a city may pay the expenses of spouses of city council members and city employees who are attending conventions.

In Attorney General Opinion MW-93 (1979) this office considered whether a school district could pay the expenses of spouses and other persons who accompanied school board members to board-related activities. The opinion concluded that article III, sections 51 and 52, of the Texas Constitution would prohibit such expenditures in most circumstances:

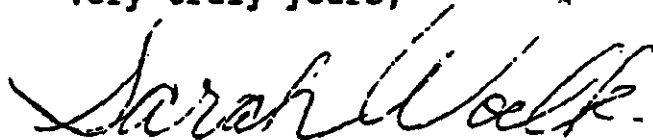
[In] our opinion the board may not as a matter of law pay the expenses of persons who have no responsibilities or duties to perform for the board and whose connection with public school matters is based solely on their relationship of blood, marriage, or friendship with a board member. You have submitted no facts indicating that the presence of a school board member's spouse, relative or other associate at a convention will serve school purposes. The presence of these persons at a convention appears to be purely social. Although a spouse's presence at a convention may facilitate personal contact among administrators and thus contribute in some small way to school purposes, we believe the benefit accruing to the school district is too minimal to sustain the expenditure. Cf. Warwick v. United States, 236 F. Supp. 761 (E.D. Va. 1964) (deductibility from federal income tax return of a wife's travel expenses).

We note that Attorney General Opinion H-1089 (1977) concluded that spouses of public officials could in some cases received free transportation on state-owned aircraft where space is available. Whether this benefit could be provided legally depended in part on the nature of the office, on the spouse's traditional role, and the spouse's connection with a particular trip. This opinion must be limited to its facts, and you have presented no facts and we are aware of none which would establish a public purpose served by the spouse's attendance at a convention.

The same conclusions would be applicable to a city. See Tex. Const. art. III, § 51 (applicable to cities, counties, and other political subdivisions).

You also ask whether a city may seek reimbursement for expenses it has paid in contravention of article III, sections 51 and 52. Where payment is made from public funds under mistake of law, the public body may seek reimbursement. City of Taylor v. Hodges, 186 S.W.2d 61 (Tex. 1945); Cameron County v. Fox, 2 S.W.2d 433 (Tex. Comm. App. 1928, jdgmt adopted). This is an exception to the general rule that money paid under a mutual mistake of law may not be recovered. City of Taylor v. Hodges, supra. The city would therefore be authorized to seek reimbursement. It has discretion, however, whether to do so in a particular case. Such factors as the amount of funds to be reimbursed, the ease of collection, and the legal and other costs incident to collection might be considered. See Attorney General Opinions JM-910 (1988); MW-93 (1979).

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section

SW/lcd

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